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IOWA'S TREASURY DEFICIT IN THE LIGHT OF THE CONSTITUTIONAL DEBATES.

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BY FRANK L. HERRIOTT.
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Beginning with the month of July, 1896, the Treasury of the State of Iowa has been financially embarrassed. In the two years and a half succeeding, the revenues of the State government have not been sufficient to pay the warrants issued against the Treasury in accordance with statutory provisions and appropriation acts. During this period the average amount of the treasury deficit was somewhat over \$400,000. Thus, January 2, 1897, it was \$397,075.70. On July 1, 1897, it was \$410,827.77. January 2, 1898, the deficit amounted to \$471,321.30 and on the first day of July last it was \$467,274.94. Twice, towards the close of the summer months of 1897 and 1898, the period of small revenue collections, the deficit mounted up to seven and eight hundred thousand dollars.

This Treasury deficit of Iowa has been promiscuously denounced by the partisan press of the State as "unconstitutional."

The seventh article of the constitution of government adopted for the State of Iowa by the constitutional convention at Iowa City in 1857, relates to State indebtedness. The second section specifies the purpose for which the State may in ordinary times in the ordinary course of business, without recourse to a plebiscite, contract debts and the limit or extent to which such indebtedness may be contracted. The language of the section is as follows:

The State may contract debts to supply casual deficits or failures in revenues; or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct or contingent, whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed the sum of two hundred and fifty thousand dollars; and the money arising from the creation of such debts shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

The intent of the constitutional limitation of the indebtedness of the State of Iowa is, as I have made bold to contend,* plainly discernible from the language of the section and the interpretation here insisted upon is unmistakably confirmed by the context of other sections of the article. But there may be some, doubtless there are many, who, in spite of what has been set forth, will persist in believing that the evidences of Iowa's present Treasury deficit in excess of \$250,000 are in violation of the constitution; that the present financial embarrassment of the State's Treasury is just such a contingency as the framers of the constitution anticipated and attempted to prevent by the inhibition of Section 2 of Article VII:

In the interpretation of laws, as already observed, the evil to be remedied or guarded against is one of the prime facts to be considered where the language of the statute is in any degree doubtful; and it is allowable for a court to inquire into contemporary history for light in reaching a correct interpretation. What weight and credence will be given contemporaneous evidence will obviously depend upon its abundance, uniformity and character. Thus the consideration to be given to the discussions of a constitutional convention will depend upon the nature of the debates, the degree to which the points involved were perceived by the members of the convention, the fullness of the expression of their views in debate, and the nature of their votes or decision upon mooted questions. Our great juriconsults, Justice Story and the late Judge Cooley, have pointed out the limitations of the authority of such evidence.† The deliberations of a convention cannot be cited as final authority; they cannot prevail in the face of the unmistakable language of a statute. Yet they do constitute a source of light and guidance when other evidence is not conclusive. The

*That which follows is a chapter in a study of "Constitutional Limitations and State Deficit—Financieing" a part of which was given by the writer in the form of lectures to the students in Political Science at Iowa College at Grinnell last November—hence the references.

†Story's Constitution, 5th Ed., Vol. I. p. 309, Cooley's Constitutional Limitations, 5th Ed., p. 79.

Supreme Court of Iowa in *Allen vs. Clayton* (63—11 Iowa.) adopted and followed this rule of judicial interpretation in a most emphatic fashion.

The evils prevalent at the time of the adoption of the present constitution which Section 2 sought to remedy can be amply shown by citations from contemporary records such as the newspaper press, pamphlets and public documents.* But we are fortunate in possessing copious reports of the debates of the constitutional convention which exhibit the state of the public mind, the political and industrial condition then prevailing which produced the evils against which the people sought to interpose the bar of the constitution. I shall therefore bring forward evidence which they afford.

The second and last constitutional convention held in the State of Iowa convened in Iowa City, Monday, January 19, 1857. It was composed of thirty-three delegates, seventeen of whom were lawyers. On January 21, twelve standing committees of five members each were appointed to transact the work of the convention, one of which was the "Committee on State Debts." The chairman of this committee was the late Senator James F. Wilson, who throughout his public career was considered among the foremost lawyers in the national council chambers at Washington. The other members of the committee were Wm. A. Warren, a mail contractor, Hiram Gibson, merchant, Squire Ayres, farmer, and

*The following extract from the message of Gov. James W. Grimes to the legislature that convened in Iowa City in December, 1856, two months before the assembling of the Constitutional Convention, will serve as an example:

"The constitution wisely provides that the State shall not in any manner create a debt exceeding one hundred thousand dollars. The framers of that instrument did not imagine that there was as great a necessity to prohibit the counties from creating large public debts, for the reason that the history of the country did not then present the case of a county becoming a large stockholder in private corporations.

"Within the past few years, however, so great has been the anxiety to procure the construction of works of internal improvement, that many counties and cities in this State have adopted the very doubtful policy of creating large municipal debts, for the purpose of becoming stockholders in railroads and other private corporations. The amount of municipal indebtedness already voted by the different cities and counties exceeds seven million dollars.

"It occurs to me that too many checks and safeguards cannot be thrown around this power, if such power exists at all, of creating municipal indebtedness for purposes of internal improvements. It is a dangerous power, and liable to the grossest abuse."—[*Salter's Life of James W. Grimes*, pp. 90-91.]

Alpheus Scott, a real estate agent—a committee, it will be noted, representative of all the leading interests of the State at that time. (Constitutional Debates, Vol. I, p. 22.) On the 15th day of the convention, February 5, this committee made its report which was first considered in committee of the whole. Their report, after a lively and interesting discussion of two days, was adopted with but little change as Article VII of Iowa's Constitution (pp. 260-284). The one material change made by the convention in the sections relating to State debts reported by the committee was increasing the limit of indebtedness from \$100,000 to \$250,000. (p. 277.)

In presenting his report Chairman Wilson said that he "consulted a majority of the members of the convention before drawing it up and the several matters set out in the different sections seemed to meet with the views of the members so universally" that he did not explain them at length, simply replying to objections as they were raised in the course of the debate. The discussion was inaugurated by an amendment being offered to Section 2; making the debt limit \$300,000. In the course of his remarks opposing the motion, Mr. Wilson said that the committee was generally opposed to the State's incurring any debt but that they had recommended \$100,000 as the debt limit, believing that "the annual revenue of the State, with the one hundred thousand dollars indebtedness which the State might contract would be sufficient to enable the State to carry on any improvement, until a proposition for an increase of the debt could be submitted to the people for their action." (p. 261.)

Mr. J. A. Parvin, of Muscatine, following, said:

I consider that the clause in the present constitution upon this subject, has been the salvation of our State. I am satisfied that the mania for building railroads has prevailed so extensively in this State, within the last five or six years, that without such a clause in our constitution, we would have been in debt at least a million of dollars.

The remarks of Mr. Geo. Gillaspy in support of the committee's report are significant:

The gentleman from Muscatine, (Mr. Parvin) in my judgment, made a very appropriate remark, when he said that the clause in the present constitution in relation to State indebtedness had been the salvation of the State. . . . The people of this State, I believe, are almost crazy upon the subject of speculation.

This convention is about to adopt a provision here that will allow banking in the State of Iowa. My opinion is that if we increase the amount of this restriction, the next general assembly will not adjourn until they have made appropriations for various purposes to the full amount that they are allowed to contract debts by the constitution. If we adopt a provision here of that kind, it would be hailed with acclamation by every broker in the State, and the bonds of the State would offer the best security for banking that could be possibly presented, and by that very inducement you could persuade everybody in the community to sign petitions asking the legislature to make appropriations for building a new capitol, asylums, and various other public institutions. What would be the result of all this? Why, the issue of bonds upon the treasury of the State, which the speculators might buy up for the purpose of banking. I undertake to say, had it not been for the provision in the constitution upon this subject, that the people ere this would have voted appropriations for railroads of upwards of ten millions of dollars.

Mr. Traer, of Benton, following, pointed out that the State's debt was then greater than the constitutional limit of \$100,000 and that such restriction was too low to permit needed public buildings to be erected such as the new capitol and insane hospital (p 262).

The debate induced Mr. Wilson to set forth the purposes of the section at some length and to define the term "debt" as used in the section proposed. As the discussion elicited by his remarks is of material importance to the matter now before us, I shall reproduce it at some length:

MR. WILSON. I wish to submit my views briefly upon this subject. I will state that this question of building a new State capitol, asylums, and other public buildings, was fully discussed by the committee before they agreed upon their report. It was with a view to the necessity of erecting these various public buildings, that the committee reported this sum of one hundred thousand dollars. We wished to prevent, if possible, the legislature from commencing a set of buildings that would cost to complete them from one to two millions of dollars. We wanted to have it understood before they were commenced how much they would cost, and then let the people pass upon this question. Some states have commenced erecting their public buildings without limiting in the first place the amount of expenditure and the consequence has been that it has cost more to complete them than was originally intended. This was the case with the building of the new state house in Ohio, and it was found before its completion that it would cost from four to five millions, an expense which the people of the State never contemplated should be incurred by the State. If you increase the amount of State indebtedness to three hundred thousand dollars, I ask you whether that will be sufficient of itself to cover the probable amount that these buildings will cost? You may commence building your capitol, blind and deaf asylums, and before they are completed it will be found that three hundred thousand dollars will not be sufficient to complete them, and operations will have to be suspended until the question is submitted to the people. I think the best plan is to submit this question to the people in the first place, and let them determine what the buildings and their cost shall be, and then make the necessary provision accordingly, and not permit the legislature to go on and make such appropriations as they please. I believe with the gentleman from Wapello (Mr. Gillaspy) that at the very first session of the legislature after the adoption of this constitution, they will provide for the consumption of the entire amount,

even if you increase it to three hundred thousand or five hundred thousand dollars.

The terms "debt or liability" in this clause do not mean warrants that the State may issue upon the treasury. The State may issue her warrants upon the treasury even beyond the amount specified.

MR. TRAEER. Does the gentleman mean to put the same construction upon the present constitution?

MR. WILSON. I do. I cannot see how the term "debt or liability" can mean anything but a bonded debt. The State may draw her warrants upon the treasury, but if there is no money there, they cannot be paid, and those who hold them will have to wait.

MR. TRAEER. Allow me to read the first part of the section upon this subject in the present constitution:

"The General Assembly shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars."

I don't understand that this means issuing the bonds of the State.

MR. WILSON. The only construction that can be placed upon that article in the constitution is, that it applies to the bonded debt of the State, and for that reason I hope the provision will be adopted just as it came from the hands of the committee. I do not believe that \$300,000 will be sufficient to cover the objects which have been named by the gentleman, and you would have to increase the sum to a still greater amount. If we are compelled to run the State in debt in order to meet the exigencies of the government, why not wipe away the restriction entirely in order that the legislature may have full play?

MR. PARVIN. I do not understand what a debt means, if the gentleman is correct in the proposition he has laid down, that the State may run in debt just as much as she please, draw her warrants upon the treasury, and sell them in the streets to the highest bidder. I do not wish to see such a state of things, and I want this constitution to mean just what it says, that this State shall never go into debt, or be liable beyond a certain amount, unless the question is first submitted to the people as provided for in this second article.

MR. TRAEER. I wish to ask the gentleman from Jefferson whether as Chairman of the Committee on State Debts he intended to put the same construction upon the article in the report that he does upon the article in the present constitution, that this \$100,000 meant only a bonded debt, and had no reference to warrants drawn upon the treasury?

MR. WILSON. That is the only construction I put upon either of the articles.

MR. TRAEER. I wish to ask the gentleman another question. Suppose we incorporate into the constitution a provision preventing the State from running into debt, what is to prevent the State from running into debt for putting up State buildings, and issuing her warrants?

MR. WILSON. There is just this about it. I presume in relation to debts contracted by the State, that parties will take the same position that they would in contracting with individuals. They will endeavor to ascertain in the first place, whether the parties with whom they contract can pay. Before making a contract for the erection of public buildings, you will have to determine when the payments are to be made. If the State cannot create the debt and meet the payments, then as a matter of course no contract will be made.

MR. TRAEER. I am a little apprehensive that the gentleman by pursuing this course will get into the same difficulty in which some of our counties have been involved. In the place of making a contract in the manner the gentleman speaks of, they went on and erected their public buildings

and issued warrants upon the treasury for the payment of the expenses thus incurred; and the consequence was that those warrants have depreciated in some cases 25 per cent. I apprehend that the State will be placed in the same position if the gentleman's construction of this provision be correct; and they would have the power to go on and build a State House, issue warrants for the expense incurred, and the consequence would be that you might run the State millions of dollars in debt.

MR. WILSON. I would ask the gentleman from Benton this question: Suppose the estimated expenses of the State for two current years should be \$300,000, and the probable amount of taxes during the year should be \$300,000. I ask whether the legislature would not be authorized to make appropriations to that amount, and have warrants drawn upon the treasury for the same? (pp. 263-264).

MR. WILSON. I hope this amount of five hundred thousand dollars will be voted down. And I perceive there is a misapprehension in the minds of some members I have conversed with, in relation to my position upon this matter. I will state that my position is this: The State can issue her warrants to the full extent of the probable amount of her revenue for the coming year, whether two, five, or even ten millions of dollars, without coming within the operation of this article of the constitution. But should she exceed that revenue, then she is creating a debt within the contemplation of this article. (p. 266).

MR. JOHNSTON. I differ in toto from my friend from Johnson (Mr. Clarke) when he says we are not sent here to place limitations and restrictions upon the future action of the legislature. I think that is our business, and I think it is highly important that we should do so, if we are to believe the half that has been said in this hall about the rascality and villainy of the legislature. . . . There has never been a time in the history of our State when it was more important that some restrictions should be placed upon the subject of State indebtedness, than the present. The people are all wild, all crazy upon the subject of making money. . . .

I believe with the gentleman from Jefferson, (Mr. Wilson) that the true interpretation of the words "debt or liability" is a bonded debt. It is so considered by all the lawyers with whom I conversed during the session of the legislature just adjourned, except Mr. Cloud of Muscatine. And if the gentleman will observe the article reported for our consideration by the Committee on State Debts they will perceive that it is in a much more contracted form than the old constitution. The old constitution says "debt or debts, liability or liabilities," while the provision under consideration says "the credit of the State shall not, in any manner, be given or loaned to, or in aid of," etc. That provision could not be interpreted as the gentleman from Benton (Mr. Traer) interprets it. And I say again that there never has been any time when it was more necessary to throw these restrictions about the legislature than it is now. (pp. 267-268.)

Following the discussion and the rejection of several amendments the section was adopted without other change than the increase of the limit of State indebtedness to \$250,000, by a vote of sixteen to eleven, in committee of the whole on February 5. (p. 272.) The following day the section was adopted as amended by a vote of eighteen to fourteen. (p. 277.) After some further debate on other sections of Article VII, Mr. Clarke of Johnson offered the following

amendment to Article VII, to be known as Section 8. "Every contract made or entered into which either directly or indirectly violates the provision of this article, shall be null and void." Mr. Clarke offered this amendment for the express purpose of bringing endorsed State warrants, unpaid for lack of funds, within the scope of the prohibition of Section 2, Article VII, and in the course of his remarks upon this particular question Mr. Clarke said:

If I owe a man a sum of money, it matters not to me whether it is in the shape of a note bearing interest, or whether it is an account which bears interest after six months. It is a debt in both cases. The word debt, as used here, applies, it seems to me, to every kind of indebtedness, for which the State may become liable. I think there is a question here which does leave room for litigation if we should insert in this constitution, as has been suggested by some members, a provision by which the State may be sued. I think the word debt applies to the indebtedness of the State in any shape or form; and standing here without limitation or qualification, I think such would be the decision of our courts. (p. 281.)

Succeeding the debate, Mr. Clarke, the mover of the motion, called for the yeas and nays and the vote resulted in a decided rejection of his amendment by a vote of eighteen to thirteen. (Page 283.)

The debates of the convention relating to city and county indebtedness afford an immense amount of additional evidence showing that one of the great and pressing political evils of the time was the reckless and extravagant use of the funding power by the minor civil corporations for the promotion of banks, industrial organizations and "internal improvements." More time was devoted by the convention to the discussion of the proper method of dealing with this problem than was given to any other one subject except banking. After prolonged discussion and innumerable motions, Section 3, Article VIII, of the present constitution was adopted, prohibiting municipal corporations taking stock in any banking corporation or assuming its debts, and also Section 4, Article XI, prohibiting all minor civil divisions becoming indebted "in any way or for any purpose" beyond 5 per cent of the taxable value of the property within such county or corporation. (p. 812.)

Sufficient has been given of the constitutional debates that preceded the adoption of the present constitution of

Iowa to acquaint us with the ideas prevalent in the minds of the people and of the delegates who adopted the articles which are now the supreme statute of the State. Several points stand out prominently in the course of the debate towards some of which we need to direct our attention in ascertaining the scope and purpose of Section 2, Article VII, of the constitution.

First and foremost the one great object sought after by the people at that time in limiting the indebtedness of the State as shown in the utterances of the delegates, was to prevent the legislature from contracting a bonded debt which could be used in establishing and promoting banks and speculative enterprises, and in extravagance in appropriations for public buildings and internal improvements—evils which were notoriously common in the forties and fifties. That these were the great evils against which the convention wished to guard is amply shown in the remarks of Messrs. Parvin, Gillaspy, Wilson, Johnston of Lee, Harris, and others. What these gentlemen thought of and always had in mind in their efforts to prevent the evils connected with legislatures and the establishment of banks was bonds and nothing else. No one then and no one since ever heard of banks utilizing ordinary state warrants or seeking to utilize them as a basis for a note circulation. They needed something more substantial and more marketable than warrants. The same was true in regard to the evils of railroad building. Counties were running riot, bonding themselves in their mad efforts to induce railroad construction. Section 2, Article VII, was intended simply and solely as a bar to the excessive use of the State's funding power.

Second, the debates show conclusively that the interpretation placed upon the scope and meaning of the section by the chairman of the committee that drafted it, which was concurred in by Judge Johnston of Lee, the two leading lawyers of the convention—the former a republican, the latter a democrat—to the effect that unpaid State warrants properly issued in consequence of appropriation acts do not come within the purview or the prohibition imposed on State in-

debtedness—this interpretation was acquiesced in by the convention. For, having such an interpretation presented squarely to them in open debate, being told that warrants outstanding and unpaid for lack of funds, even though greatly in excess of the limit of indebtedness authorized by them, would not be a violation of the article proposed, they permitted the language of the section to remain unaltered.

But their acquiescence in this interpretation was more than passive. It was in fact deliberately sanctioned and supported. Mr. Clarke of Johnson, it will be remembered, moved to amend Section 2 in order to include unpaid warrants by adding a section which declared all contracts directly or indirectly violating Article VII null and void, but notwithstanding Mr. Johnston's speech in which he specifically contended that unpaid warrants were "debts" as comprehended by Section 2, his amendment was voted down by a vote of eighteen to thirteen. The circumstances of that vote were such that it seems to me there can be no question about the kind of indebtedness which the convention had in mind. That vote was a decisive demonstration. There was nothing vague or uncertain about the matter in question or the debate; and the convention unequivocally showed that they sought to prohibit a bonded indebtedness beyond a certain amount—not a floating debt such as Iowa's present Treasury deficit is.

CHANGE OF NAME.—We published last week a notice of an application to be made to the next term of the District Court, to change the name of this town to *Muscatine*. We trust that the application will be successful, and that we shall soon have a name for our flourishing city, in which there is euphony and originality.—*Democratic Enquirer, Bloomington, Iowa, May 12, 1849.*

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